

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|-----------------------------|---|---------------------|
| RAYMOND WINCHESTER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civ. No. 15-991-GMS |
| |) | |
| SUPERIOR COURT and |) | |
| JUDGE CALVIN SCOTT, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM

The plaintiff, Raymond Winchester (“Winchester”), filed this lawsuit pursuant to 42 U.S.C. § 1983.¹ (D.I. 2.) He appears *pro se* and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 6.) The case was closed after mail sent to Winchester was returned as undeliverable. Winchester moves to reopen the case (D.I. 8), and the motion will be granted. The court proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

I. BACKGROUND

Winchester initiated this action in August 2015 alleging malicious prosecution and unlawful incarceration. He alleges that the Superior Court of the State of Delaware sent him to jail for “nothing.” He seeks compensatory and punitive damages.

Documents attached to the complaint indicate that Winchester was charged with violation of probation, incarcerated on March 24, 2015, and a hearing was held on July 16, 2015.

¹When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Winchester was found guilty and sentenced to three years at Level V, suspended after five months for one year at Level III. Winchester appealed, and the appeal was dismissed as untimely. Winchester alleges that he should not have been in jail.

II. STANDARD OF REVIEW

A federal court may properly dismiss an action *sua sponte* under the screening provisions of 28 U.S.C. § 1915(e)(2)(B) if “the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.” *Ball v. Famiglio*, 726 F.3d 448, 452 (3d Cir. 2013); *see also* 28 U.S.C. § 1915(e)(2) (*in forma pauperis* actions). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because Winchester proceeds *pro se*, his pleading is liberally construed and his complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. at 94 (citations omitted).

An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is “based on an indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *see, e.g., Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate’s pen and refused to give it back).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. §§ 1915 and 1915A, the court must grant Winchester leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). A plaintiff must plead facts sufficient to show that a claim has substantive plausibility. *See Johnson v. City of Shelby*, __U.S.__, 135 S.Ct. 346, 347 (2014). A complaint may not be dismissed, however, for imperfect statements of the legal theory supporting the claim asserted. *See id.* at 346.

Under the pleading regime established by *Twombly* and *Iqbal*, a court reviewing the sufficiency of a complaint must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, the court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Connelly v. Lane Const. Corp.*, __F.3d__, 2016 WL 106159, at *4 (3d Cir. 2016) (internal citations and quotations omitted). Elements are sufficiently alleged when the facts in the complaint “show” that the plaintiff is entitled to relief.

Iqbal, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

III. DISCUSSION

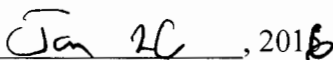
Winchester has named defendants who are immune from suit. The Delaware Superior Court is immune from suit by reason of the Eleventh Amendment of the United States Constitution which protects an unconsenting state or state agency from a suit brought in federal court by one of its own citizens, regardless of the relief sought. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996). Judge Scott has absolute judicial immunity as a judicial officer in the performance of his duties and he is not be liable for his judicial acts. *See Azubuko v. Royal*, 443 F.3d 302, 303 (3d Cir. 2006).

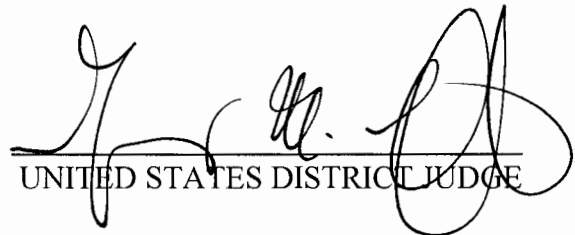
Therefore, the court will dismiss the complaint as the defendants are immune from suit.

IV. CONCLUSION

The court will: (1) grant the plaintiff’s motion to reopen the case (D.I. 8); and (2) will dismiss the complaint based upon the defendants’ immunity from suit pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii). In light of the nature of Winchester’s claims, the court finds that amendment would be futile. *See Alston v. Parker*, 363 F.3d 229 (3d Cir. 2004); *Grayson*, 293 F.3d at 111; *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976).

An appropriate order will be entered.


Wilmington, Delaware


UNITED STATES DISTRICT JUDGE